Supreme Court, U.S.
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No. 02-880

IN THE

Supreme Court of the United States

MUKAND ANEJA,

Petitioner,

v.

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

The Triborough Bridge and Tunnel Authority ("TBTA"), the Respondent herein, hired the Petitioner, Mukand Aneja, in February 1994 and discharged him for poor performance in November 1994. He filed a charge of age discrimination with the Equal Employment Opportunity Commission ("EEOC") which dismissed his charge after an investigation. On July 1, 1996, the EEOC issued and mailed to Petitioner by certified mail a Notice of Suit Rights ("right-to-sue letter"). Petitioner received the letter on or before July 6, 1996. Ninety-three days later, on October 7, 1996, plaintiff filed a *pro se* complaint in the United States District Court for the Southern District of New York alleging violations of 42 U.S.C. § 2000(e), *et seq.* (Title VII), the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, *et seq.*, and 42 U.S.C. § 1981. Neither the original complaint nor the amended complaint subsequently filed by Petitioner contained a claim of violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-219.

Following discovery, Respondent moved for summary judgment. The District Court, by a summary order entered on October 27, 1999, granted Respondent's motion for summary judgment and dismissed the complaint in its entirety. The Court held that Petitioner's Title VII and ADEA claims were time-barred because Petitioner had filed his complaint more than 90 days after he had received the right-to-sue letter. As to the § 1981 civil rights claims, the Court found that Petitioner had failed to show that Respondent's reasons for discharging Petitioner were false or pretextual. Pet. App. 50-51.[1]

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1. References to documents contained in the Appendix to the Petition for a Writ of Certiorari shall be referred to herein as "Pet. App."

On the appeal from the District Court's judgment, the Petitioner argued that his complaint filed on October 7, 1996 was timely because he received the EEOC's right-to-sue letter on July 8, 1996. By a summary order dated December 7, 2000, the Second Circuit Court of Appeals rejected Petitioner's contention because evidence received by, and Petitioner's position in, the District Court established that the right-to-sue letter had been mailed to Petitioner on July 1, 1996 and had been received by him on July 6, 1996. Accordingly, his time to file the complaint had expired before October 7, 1996. The Circuit Court also considered and rejected Petitioner's argument that the District Court should have considered whether his time to file was equitably tolled based on his allegation that an employee of the District Court clerk's office told him that he had filed on time. The Circuit Court held that equitable tolling was not appropriate because the clerk's statement, made the day that Petitioner filed his complaint, would not have persuaded him to delay filing. Pet. App. 26-29.

The Circuit Court further held that the District Court properly had dismissed Petitioner's § 1981 claim because he failed to rebut Respondent's "*substantial* showing of a non-discriminatory reason for his discharge." *Id.* (emphasis added). The Court affirmed the District Court's findings that the same person who hired Petitioner in February 1994 gave him a negative evaluation seven months later in September and then fired him the following month upon receiving additional negative reports from other managers at the TBTA, and that Petitioner had failed to show that Respondent's alleged reasons for discharging him were false or pretextual.

However, although Petitioner had not raised any claim of FLSA violations in either his original or amended complaint or on appeal from the District Court's judgment, the Circuit Court raised the issue that Petitioner may have asserted a claim of violations of the FLSA before the District Court which had not been addressed. Accordingly, it vacated the District Court's judgment to the extent that it dismissed Petitioner's potential FLSA claim and remanded the matter for further proceedings. *Id.* Respondent's petition for a rehearing on the Circuit Court's FLSA ruling was denied.

On remand, the District Court granted Respondent's motion for summary judgment, holding that Petitioner worked for TBTA in a *bona fide* professional capacity and, thus, was exempt from the overtime payment requirements of the FLSA. The District Court held that Petitioner, while employed by TBTA: (a) earned an annual salary of $68,000; (b) worked as an engineer, a field requiring professional knowledge and training; and (c) exercised discretion and judgment regularly.

On appeal, Petitioner argued that he had been denied due process in the District Court and that he was not exempt from the FLSA because: (a) under the "duties test", he spent a majority of his time performing supervisory tasks rather than engineering work; (b) under the "salary test", he was an "at-will" employee; and (c) he was performing a public service and did not have the authority to fire, hire, and promote those whom he supervised. Petitioner also argued that Respondent retaliated against him in violation of the FLSA and that Respondent's reply to his amended complaint was time-barred because it failed to address his FLSA claim.

By a summary order dated May 23, 2002, the Second Circuit Court of Appeals reviewed, *de novo*, the judgment of the District Court. Pet. App. 19-24. Adopting the reasons set forth by the District Court, the Court of Appeals held that Petitioner was an "exempt" employee working for Respondent in a professional capacity within the FLSA's framework. The Court rejected as irrelevant Petitioner's claim that the FLSA applied to him because he performed a public service and he did not have the ability to hire, fire or promote those whom he supervised. It also found that Petitioner was paid "on a salary basis" since he periodically received a paycheck that constituted a portion of his compensation which did not vary according to the quality or quantity of work he performed.

The Court of Appeals also rejected Petitioner's retaliation claim because it failed to satisfy the requirements of the FLSA's retaliation provisions. The Court further noted that Petitioner never filed a formal complaint for violations of the FLSA before his termination. Finally, the Court rejected Petitioner's claim of denial of due process, finding no indication that the District Court's judgment did not comply with due process.

Petitioner moved for rehearing before the Second Circuit Court of Appeals, which was denied on July 12, 2002. Pet. App. 1-2. Subsequent to the Second Circuit's denial, Petitioner filed the instant petition for a writ of certiorari on December 7, 2002.

SUMMARY OF ARGUMENT

The petition should be denied because the Court of Appeals properly applied the correct standards and legal principles enunciated by statutes, regulations, and the case law of this Court and other federal circuit courts. Its decisions do not conflict with any decision of this Court or any other Court of Appeals; accordingly, review by this Court is not warranted. *See Braxton v. United States*, 500 U.S. 344, 347-48 (1991) (principal purpose for which the United States Supreme Court uses certiorari jurisdiction is to resolve conflicts among Circuit Courts of Appeals and state courts concerning meaning of provisions of federal law). Petitioner's primary ground in support of his application is that the Court of Appeals erred in its findings of fact or in upholding the District Court's findings of fact. Only in the rarest of circumstances, not present here, is a petition for a writ of certiorari granted due to error in making findings of fact, or the alleged misapplication of a properly stated rule of law. U.S. Sup. Ct. Rule 10.

The decisions below were correct and should not be disturbed by this Court because:

1. The Court of Appeals properly affirmed the District Court's determination that Petitioner's Title VII and ADEA claims were time-barred because Petitioner filed his complaint more than 90 days after his receipt of a right-to-sue letter from the EEOC, and factors warranting the equitable tolling of the limitations period were not present.

2. Similarly, the Court of Appeals correctly affirmed the District Court's dismissal of Petitioner's 42 U.S.C. § 1981 claim because Petitioner failed to rebut Respondent's

substantial showing of a non-discriminatory reason for his discharge. Under the framework set forth in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000); *Texas Dep't. of Comm. Affairs v. Burdine*, 450 U.S. 248 (1981); and *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), Petitioner had the burden of producing sufficient evidence of unlawful discrimination, but failed to do so.

3. The Court of Appeals also properly determined that Petitioner's FLSA claim was correctly dismissed by the District Court because Petitioner was an exempt employee under the FLSA standards. The Court of Appeals reviewed Petitioner's FLSA claim *de novo* and concluded that Petitioner worked in "a *bona fide* professional capacity" as a Facility Engineer for Respondent.

REASONS FOR DENYING THE PETITION

1. Petitioner's Title VII and Age Discrimination Claims Were Time-Barred

The Court of Appeals properly affirmed the District Court's determination that Petitioner's claims under Title VII and ADEA were time-barred because Petitioner filed his complaint more than 90 days after his receipt of a right-to-sue letter from the EEOC.

Under the statute of limitations applicable to his Title VII and ADEA claims, Petitioner was required to file a complaint within 90 days after receiving notice of the EEOC's final decision. *See* 42 U.S.C. § 2000(e)-5(f)(1) and 29 U.S.C. § 626(e). The EEOC issued and mailed its right-to-sue letter to Petitioner by certified mail on July 1, 1996. After extensive discovery and argument on the issue, the District Court and

the Second Circuit agreed that Petitioner had received the right-to-sue letter on July 6, 1996. His deadline for filing a complaint was 90 days later, on October 4, 1996. However, Petitioner did not file his complaint until October 7, 1996, the 93rd day, and his Title VII and ADEA claims were therefore time-barred.

In reaching this determination, the courts below followed the ruling of this Court in *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 152 (1984). *Baldwin* held that a *pro se* litigant who failed to file her Title VII complaint until the 96th day after receiving her right-to-sue notice from the EEOC was time-barred. This Court noted that there were no compelling reasons to toll the statute of limitations and that "strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *Id.*

The Second Circuit's determination that Petitioner's Title VII and ADEA claims were barred by the 90-day statute of limitations is consistent with the holdings of several other circuit courts, as well as *Baldwin*. *See, e.g.*, *Rice v. New England College*, 676 F.2d 9, 11 (1st Cir. 1982) ("[i]n the absence of a recognized equitable consideration, the court cannot extend the limitations period by even one day"); *McCrary v. Corry Manufacturing Corp.*, 61 F.3d 224, 227-29 (3d Cir. 1995) (affirming dismissal of untimely ADEA claim as subject to 90-day statute of limitations which is not tolled by plaintiff's request for reconsideration made to EEOC during 90-day period); *Luckett v. Rent-A-Center*, 53 F.3d 871, 873 (7th Cir. 1995) (affirming dismissal of Title VII suit as time-barred; equitable tolling of limitations period

does not protect party who omits ordinary precautions); and *Littell v. Aid Ass'n. for Lutherans*, 62 F.3d 257, 259 (8th Cir. 1995) (affirming dismissal of claim because failure to file ADEA claim within 90 days after receipt of EEOC right-to-sue letter renders action untimely).

In this case, as in *Baldwin*, the Petitioner failed to file a discrimination complaint within the prescribed time period. The consequence of the failure to file an action within a period prescribed by the statute of limitations is dismissal of the case, and equitable relief from that consequence is to be afforded "only sparingly." *See Baldwin, supra*, at 152. *See also Irwin v. Dep't. of Veteran Affairs*, 498 U.S. 89, 96 (1990) (although Title VII statute of limitations is subject to equitable tolling, such equitable relief should not be afforded in case of mere neglect of 90-day deadline). In the present case, the District Court and the Court of Appeals concurred that no cause whatsoever had been shown for equitable tolling of the statute of limitations in this case.

2. Petitioner's Section 1981 Claim Was Properly Dismissed

The Court of Appeals correctly affirmed the District Court's dismissal of Petitioner's 42 U.S.C. § 1981 claim because Petitioner failed to rebut Respondent's substantial showing of a non-discriminatory reason for his discharge.

In a disparate treatment employment discrimination case brought under Section 1981, the three-step burden shifting analysis developed in *Burdine* and *McDonnell Douglas* is used: (1) the employee has the initial burden of establishing a prima facie case of unlawful discrimination; (2) if the employee meets that burden, the burden of production – but not persuasion – shifts to the employer to articulate a legitimate, non-discriminatory reason for the employee's

discharge; and (3) if the employer does so, the burden is then on the employee to show that the employer's stated reason was merely a pretext for discrimination. *Texas Department of Comm. Affairs v. Burdine*, 450 U.S. 248 (1981); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The Petitioner retained the ultimate burden of proof to show unlawful discrimination. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 143 (2000) ("[a]lthough intermediate evidentiary burdens shift back and forth under this framework, the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff"). The District Court found, and the Second Circuit agreed, that Petitioner failed to meet that burden.

The District Court dismissed, and the Second Circuit correctly affirmed, Petitioner's Section 1981 claim because Respondent demonstrated a legitimate non-discriminatory reason for discharging Petitioner – poor performance – and Petitioner made no showing that Respondent's reasons were false or pretextual. Pet. App. 28. Indeed, Petitioner offered no basis for disbelieving TBTA's reasons; rather Petitioner admitted that his employment was terminated because of poor performance and not due to discrimination. *See* Deposition of Mukand Aneja, March 20, 1997, pp. 84, 94, 95 (Exhibit 25 to Declaration of Andrew Dansicker in Support of Defendant's Motion for Summary Judgment).

The lower court's decision does not contravene any decision of this Court or any other federal courts of appeal and, thus, does not warrant this Court's review. *See, e.g., Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000); *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993); *Texas Dep't. of Comm. Affairs v. Burdine*, 450 U.S. 248 (1981); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Lynch v. Belden and Co., Inc.*, 882 F.2d 262 (7th Cir. 1989); *Roxas v. Presentation College*, 90 F.3d 310 (8th Cir. 1996).

3. Petitioner's FLSA Claim Was Properly Dismissed as He Was An Exempt Employee

The Court of Appeals correctly determined that Petitioner's claim under the FLSA was properly dismissed. The Second Circuit examined the facts *de novo*, applied the proper legal standards for summary judgment, and concluded on the merits that, because Petitioner was an exempt employee under the FLSA standards, his claim was properly dismissed. *See* Pet. App. 19-24.

The FLSA provides that covered employees who work more than 40 hours per week must be compensated "at a rate not less than one and one-half times the regular rate at which [they are] employed." 29 U.S.C. § 207(a)(2). However, Congress expressly exempted from the FLSA's overtime provisions persons employed in a *bona fide* executive, administrative or professional capacity. 29 U.S.C. § 213(a)(1). As a Facility Engineer for the TBTA, Petitioner was employed in a *bona fide* professional capacity and, therefore, he was exempt from the provisions of section 207. *Id.*

The regulations prescribe a three-prong test to determine whether an individual, like Petitioner, is employed in a *bona fide* professional capacity for purposes of section 213. Specifically, employees: (i) who are compensated on a salary or fee basis at a rate of at least $250 per week;[2] (ii) whose "primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning

2. Employees are considered to be paid "on a salary basis" if, like Petitioner: (i) they are paid on a weekly or less frequent basis a predetermined amount constituting all or part of their compensation; and (ii) such payment is not subject to reduction because of variations in the quantity or quality of their work. 29 C.F.R. § 541.118.

customarily acquired by a prolonged course of specialized intellectual instruction and study . . ."; and (iii) whose duties require "the consistent exercise of discretion and judgment, . . ." are deemed to be employed in *bona fide* professional capacities for purposes of that section. 29 C.F.R. § 541.3(a)(1); 29 C.F.R. § 541.3(e); *Rutlin v. Prime Succession, Inc.*, 220 F.3d 737 (6th Cir. 2000); *Freeman v. National Broadcasting Co., Inc.*, 80 F.3d 78 (2d Cir. 1996).

Petitioner's position as a Facility Engineer at the TBTA meets all three of the above-outlined requirements. Petitioner's $68,000 salary was paid to him in bi-weekly increments at a gross, pre-tax rate of $2,608.22, which after taxes and other applicable deductions equaled approximately $1,900. This salary satisfies the minimum $250 per week salary prong of the professional capacity test. 29 C.F.R. § 541.3(e); 29 C.F.R. § 541.118.

As for the "duties" test, the regulations explicitly identify Petitioner's profession – engineering – as one which meets the requirement for a prolonged course of specialized intellectual instruction and study. 29 C.F.R. § 541.301(e)(1). Petitioner's primary duties also satisfied the discretion and judgment prong of the professional capacity test because, as Facility Engineer, he was explicitly required to exercise independent judgment. 29 C.F.R. § 541.3(e).

The Second Circuit accurately concluded that, as a highly-paid Facility Engineer, Petitioner was an exempt professional under the FLSA. This conclusion does not contravene any decision of this Court and is consistent with other Courts of Appeals decisions. *See, e.g., Balgowan v. State of New Jersey*, 115 F.3d 214, 219 (3d Cir. 1997) (engineers qualify for professional exemption under the

FLSA); *Boykin v. Boeing Co.*, 128 F.3d 1279, 1282 (9th Cir. 1997) (salaried engineers exempt from overtime pay provisions of the FLSA). *See also Dingwall v. Friedman Fisher Assoc., P.C.*, 3 F. Supp. 2d 215, 219 (N.D.N.Y. 1998) (design engineer with associates degree in electrical technology whose work required both advanced knowledge in engineering and exercise of judgment satisfied duties test required for section 213 exemption); *Molina v. Sea Land Services, Inc.*, 2 F. Supp. 2d 185, 189 n.9 (D. P.R. 1998) (crane port engineer responsible for crane operation and paid annual salary of approximately $70,000 deemed to have satisfied prima facie the required criteria under "professional" as to salary and discretionary judgment); *Leslie v. Ingalls Shipbuilding, Inc.*, 899 F. Supp. 1578, 1582 (S.D. Miss. 1995) (engineering specialist exempt from overtime pay under section 213 of the FLSA because job was "professional in nature" – job qualifications included a bachelor's degree and engineering experience, duties included carrying out of engineering projects, and annual salary equaled $63,489.60).

The Court of Appeals also rejected Petitioner's retaliation claim because it failed to satisfy the requirements of the FLSA's retaliation provisions, citing 29 U.S.C. § 215(a)(3) and *Lambert v. Genesee Hosp.*, 10 F.3d 46, 55 (2d Cir. 1993). The Second Circuit concluded its opinion with a determination that, contrary to Petitioner's claims, there was no indication that the District Court's judgment failed to comply with due process.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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